



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2020-0301; FRL-8907-02-R2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure requirements for the 2015 Ozone National Air Quality Standards.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of a State Implementation Plan (SIP) submitted by the State of New York to demonstrate that the State meets the requirements of certain sections of the Clean Air Act (CAA) for the 2015 ozone National Ambient Air Standards (NAAQS).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA-R02-OAR-2020-0301. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Edward J. Linky, Environmental Protection Agency, 290 Broadway, New York, New York 10007-1866, at (212) 637-3764, or by email at Linky.Edward@epa.gov.

SUPPLEMENTARY INFORMATION:

The **SUPPLEMENTARY INFORMATION** section is arranged as follows:

Table of Contents

- I. What is the background for this action?
- II. What comments were received in response to the EPA's proposed action?
- III. What action is the EPA taking?
- IV. Statutory and Executive Order Reviews

I. What is the background for this action?

Section 110(a) of the CAA requires each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. On July 1, 2021 (86 FR 35034), the EPA published a Notice of Proposed Rulemaking that proposed to approve elements of the SIP submission from the State of New York, submitted to EPA on September 25, 2018 and July 10, 2019, as demonstrating that the State had the necessary authority and resources to implement the infrastructure requirements of the 2015 ozone NAAQS. As explained in the proposal, the EPA is not addressing section 110(a)(2)(I) in this action, as Part D plans for nonattainment areas are subject to a different submission schedule than infrastructure SIPs, and the EPA will take action on Part D plans when submitted through a separate process. As also explained in the proposal, the EPA is not addressing the visibility portion of 110(a)(2)(J), as there are no new visibility protection obligations under the 2015 Ozone NAAQS. Additionally, as explained in the proposal, the EPA will act on section 110(a)(2)(D)(i)(I) (commonly referred to as prongs 1 and 2) in a separate notice at a later date.

II. What comments were received in response to the EPA's proposed action?

EPA did not receive any comments on the proposed approval of New York's 2015 Infrastructure Plan revisions published July 1, 2021 (86 FR 35034).

III. What action is the EPA taking?

The EPA is approving New York's September 25, 2018 and July 10, 2019, SIP revisions as meeting the requirements of section 110(a)(1) and (2) infrastructure requirements of the CAA for the 2015 ozone NAAQS, with the exception of CAA section 110(a)(2)(D)(i)(I) (prongs 1 and 2).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 27, 2021.

Walter Mugdan,
Acting Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

2. In §52.1670, the table in paragraph (e) is amended by adding entries for “Section 110(a)(2)

Infrastructure Requirements for the 2015 ozone NAAQS” and “Section 110(a)(2)(G)

Infrastructure Requirements for the 2015 ozone NAAQS” at the end of the table to read as follows:

§52.1670 Identification of plan.

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(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI- REGULATORY PROVISION

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA approval date	Explanation
* * * * *				
Section 110(a)(2) Infrastructure Requirements for the 2015 Ozone NAAQS	Statewide	09/25/2018	[insert date of publication in the Federal Register], [insert Federal Register citation]	Full approval. This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (H), (J), (K), (L), (M).

Section 110(a)(2)(G) Infrastructure Requirements for the 2015 Ozone NAAQS	Statewide	07/10/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	Full approval.
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[FR Doc. 2021-18989 Filed: 9/1/2021 8:45 am; Publication Date: 9/2/2021]